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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
RULES PROMOTING)
EFFICIENT USE,)
FAIR DISTRIBUTION)
OF TOLL-FREE NUMBERS)

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Reply Comments of Vanity International
Toll Free Service Access Codes

Loren C. Stocker, Managing Partner of Vanity International, hereby submits reply comments on *vanity numbers* on behalf our firm, our clients, and the general public.

Our company is uniquely positioned to view the scope of this situation as we consult to both large, Fortune 500, companies and small companies that subscribe to 800 service. Recently, we launched 800-SoftLinesm and SoftLinesm Studios which are dedicated to the deployment and development of multi-channel commerce. The SoftLinesm enterprise is basically an incubator for baby businesses aspiring to become the next 800-Flowers, each employing branded toll-free numbers, Internet domain addresses, and interactive services. We wish to focus our reply comments principally on the vanity numbers and incorporate by reference past comments, specifically *Comments of Vanity International and Reply Comments of Vanity International (1995)*, *Ex Parte Comments of Vanity International (1996)*, *Petition for Stay and Reconsideration (1997)*, *Reply Comments of Vanity International on Petition (1997)* and *Further Ex Parte Comments on Toll-Free Service Access Codes (1997)*.

Toll-Free Numbers Hold No Intrinsic Value

We disagree that toll-free numbers have intrinsic value. Contrary to ICB's assertion, the intrinsic value of a vanity number is contained entirely in the vanity overlays created by

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the end users, not in the numerics themselves. If toll-free numerics had value, then that value would be self-evident and inherent in the digital sequence. It is not. Rather, any value created rests entirely in the vanity overlay -- in 800-NEW-IDEA for example -- not the underlying toll-free numeric, 800-639-4332. This fact is further evidenced by billing records which universally list only the digital addressing, never the vanity numbers created by users. Ultimately, it is solely the subscriber who creates and privately owns all intellectual property rights to 800-NEW-IDEA, not the public.

We do agree, however, that value is created at the conception of a business plan and that value is not dependent upon use. A mere idea followed by subscription to the appropriate toll-free number is the genesis of defensible business investment. For example, the value of 800-NEW-IDEA takes root the moment the toll-free subscription 800-639-4332 is secured. If it takes many months of planning before the vanity overlay is exposed to the public and, of course, to the competition, so be it. Subsequent use as a vanity number only creates and strengthens trademark rights. The business plan itself has had value from the moment the subscriber took action.

In our view, it is the *public convent* that permits the subscriber to retain and control the underlying toll-free number once "allocated efficiently and fairly" on a "first come, first serve" basis. Allocation to commercial end users has never been conditional. Any subsequent interference by the Commission, RespOrg, Carriers, or anyone else constitutes a breach of trust and may result in damages. Rather, the public interest lies in creating a supportive environment for start-up companies like 800-Flowers, 800-Mattress, and others to flourish and garner investment.

1-800 is Generic and Confusion will Endure Despite Awareness

Pay close attention and you are likely to hear someone say, "Our 800 number 1-888-....." Next year the same statement may apply to "1-877," as well. The fact is that 800 is *generic* and other SACs in the 800 series are inherently confusing. The Commission itself is creating confusion by using 888-CALL-FCC which is now losing calls and damaging

the user of 800-CALL-FCA, *The Feeder Corporation* in Illinois. Nobody wins here. Consumers can't reach the FCC and FAC wastes time and energy answering calls for the FCC, as well as seeking credit for wrong numbers with their carrier – who may or may not be willing to do so. This public confusion will only get worse as additional 800 series SAC's are released.

The power of vanity numbers is in their spontaneous recall. The problem is that most consumers recall "1-800," regardless of which SAC is presented. Once awareness approaches 100%, consumers will then only be sure they are unsure. Consequently, they will try "1-800," then "1-888," then "1-877," and so forth until they reach the right party. This failed experiment should be halted at 888 before any more damage is done.

Right-of-first-refusal Should be Granted at No Charge

In our view, the 800 series SAC (888, 877, 866, etc.) are analogous to "Air Rights" over the 800 property. It follows that right-of-first-refusal should be granted to those users who sought the Commission's protection from the "industry's" ill-fated solution. Further, those users who sought protection should not be charged for something that was forced upon them; all because of frivolous assignments by that same "industry" which led to the exhaustion of the 800 SAC.

Build User-Friendly Domain and they Will Come...

We support the Commission's right to declare 800 and now 888 domains exclusively for commerce, so long as even the smallest of business customers retain equal access to these numbers. Literally, *millions* of 800 and 888 numbers remain in Carrier control for paging and a variety of non-commercial toll-free uses. For the most part, end users of these services enjoy no portability rights and the reassignment of these numbers to use-specific SACs may only raise protest from Carriers whom the Commission regulates.

We feel, however, that it would be punitive to merely create separate domains say, for example, placing all pagers on 877 and all personal users on 866. These SAC's are too

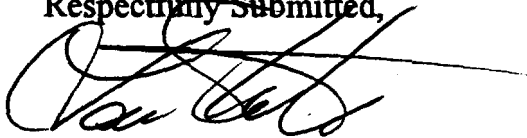
close to 800 to avert confusion and do nothing to create understanding. Rather, if the Commission creates a *distinctive* domain for pagers, personal, and other major uses the domain would actually attract users. We've suggested domains like SKY, RES, FAX, CAR, and others that may eventually achieve distinction of their own. Immediate relief can come from shifting personal users to the 500 and 700 SACs, as these domains are already designated for personal use.

Conclusion

In our view, the Commission can not begin to create an enduring public policy on vanity numbers without the express recognition that intellectual property rights can be built upon the *public convent* created by toll-free use. We believe that the *land model* of ownership fits; using the *homesteading* model to ensure equitable allocation followed by an *uninhibited right of exchange between consenting users* to ensure that toll-free numbers are put to their best use in a decentralized fashion.

Subsequently, the Commission should seek comment on creation of additional domains that would become associated with paging, residences, faxing or other uses in much the same way "1-800" has become associated with business use. Toll-free 800 numbers are a great success story. Why not create others?

Respectfully Submitted,



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Exhibits Follow

Exhibits Attached

- **Comments of Vanity International (1995)**
- **Reply Comments of Vanity International (1995)**
- **Ex Parte Comments of Vanity International (1996)**
- **Petition for Stay and Reconsideration (1997)**
- **Reply Comments of Vanity International on Petition (1997)**
- **Further Ex Parte Comments on Toll-Free Service Access Codes (1997)**

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
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Toll Free Service Access Code)	CC Docket No. 95-155
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To: The Commission)	

COMMENTS OF VANITY INTERNATIONAL

Loren C. Stocker, Managing Partner of Vanity International, hereby submits comments in conjunction with the Notice of Proposed Rule Making released in this proceeding on October 5, 1995. With respect thereto, the following is stated:

Vanity™ International is the world's premier vanity design and consulting firm. We specialize in strategic marketing through the creation, acquisition, and application of vanity numbers, typically vanity 800 numbers. I am managing partner of the firm, and the author of a article on vanity numbers that appeared in Advertising Age (July 24, 1995). We believe you will find the article to be timely, informative, and perhaps the definitive work of its kind, and have included for your reference.

We work directly for the end users of 800 numbers to create and implement an enduring contact strategy. Our clients include many well-known, Fortune 500 companies and others who wish to create competitive advantage in their class of goods or services. Further, we are developing marketing programs and services for our own vanity numbers.

Overview

We are especially concerned about any language that would revert control of 800 numbers back to the carriers under the legal fiction of a protecting a "public resource." Specifically, we feel that there should be no language that would prevent our clients, and others, from the free exchange, release, or transfer ownership of 800 numbers for a fee, if necessary, to compensation the releasing party for their legitimate business interest. What right does the FCC have to prevent us from acquiring numbers we need, if all parties are willing?

Further, it would be outrage and an embarrassment for the FCC to allow the cartel of large carriers who call themselves "the industry" to regain control of 800 and future toll-free numbers. Everyone knows that "the industry" has always held the best numbers for their best customers which, in effect, leverages this "public resource" for their own gain. This is a pure and simple attempt to undo what the courts have done; confirmed the customer's legal right of ownership and control.

Our comments will be representative of the end user's perspective. Beyond our primary concern for the free exchange of numbers, we will propose a framework that *will avert the 800 "crisis" altogether*, if adopted. We believe these to be sensible solutions that have somehow escaped the discussions thus far.

Background

Unassigned 800 numbers may be something akin to a "public resource," but once 800 are assigned to a business this premise goes to its logical demise. The whole idea behind portability was that customers own their numbers; not the carriers. So, why reverse this now?

At a minimum, a phone number represents a user's ^{primary} ~~priority~~ customer base. This reason alone is sufficient to view assigned 800 numbers as a business asset, comparable to any other trade secret. Further, when an 800 number is used as a vanity number or in a jingle (like Empire Carpet in Chicago "588-2300"), it becomes a servicemark and acquire brand equity like 1-800-Call-ATT, 1-800-Collect, 1-800-Flowers, and others. In effect, proprietary intellectual properties are overlaid onto 800 numbers, just as landscape improvements and buildings are overlaid onto real property.

This concept of a "public resource" for unassigned 800 numbers may have merit, analogous to the status of public land prior to homesteading. But, once assigned, 800 numbers inseparately contain proprietary intellectual property and -- like real property -- should be afforded full legal protection. It would be equally absurd to renounce real estate ownership rights simply because the land was at one time barren. The FCC should not allow "the industry" to make any rule that interferes with the rights of businesses to freely exchange, release, or transfer ownership of 800 numbers. Period. Anything short of this would give "the industry" an unconscionable license to interfere with the business plans of their subscribers.

It's clear to us that "the industry" created the crisis we are in today. Not by the limited supply of 800 numbers, but rather by their appetite for somewhat frivolous assignments. Most recently, "the industry" has diminished the business status of 800 numbers by assigning them to a mixed-bag of residential, pagers, cellular phone, and the like. I understand that a certain savings bank even gave away 800 numbers to anyone who opened a account. There was never a crisis when 800 numbers were used primarily for business. Now that they've been given away like toasters, we've run out; No surprise.

From our research, millions of 800 numbers -- and I don't mean thousands -- ring to single-user personal voice mail, homes, cars, cellular phones, pagers, or are "in-stock" and ready such purposes. Of course, the purveyors of these services are customers -- not carriers themselves -- so these numbers are listed as "working" in the national database. It should come as no surprise that we are about to run out, given that there was never any toll-free planning and no constraints in place until June 1995.

It is clear that the carriers -- now acting as a virtual cartel -- are using this crisis to partially undo portability rights. Declaration of 800 numbers as a "public resource" is just a smoke screen to justify sever restrictions in the transfer of 800 number ownership. Read through the smoke. "The industry" is really seeking to reverse court-ordered customer ownership rights and reestablish 800 numbers as *their* business assets. They can then openly leverage 800 numbers they control to close new business with long-term contracts.

This is going on right now, although not openly! If you're in denial, it can be easily confirmed that virtually no 800 numbers have aged (i.e. dropped back in the national database) since "the industry" got wise late this summer. Further, many numbers are now being listed as "working" during the aging process to avoid detection. If 800 numbers are a "public resource" as claimed, why are the carriers allowed to control these "public resources" to benefit themselves and their larger, more-favored customers. Check it out. The data speaks volumes. Any action that would lift or curtail customer ownership and the free exchange of 800 numbers should be vigorously opposed.

Real Solutions -- Mnemonic Toll-Free Codes

The reason 800 numbers have such great value is their mindshare; virtually every American knows that 800 numbers are for business toll-free. This is a vital distinction because 888 numbers will be functionally equivalent, but will never achieve the prestige and universal acceptance of 800 numbers -- even years from now. From a marketing standpoint, if an 800 number is on main street, an 888 number will be a second avenue address. The exchanges that follow, 877, 866, etc., will be pure non-sense.

A real solution for the 800 crisis is to do what is equivalent to urban planning [Do nothing, and you have downtown Boston with it's paved over cow paths (the 800 world today). Plan now, and you at least have Chicago; a grid system where most everything makes sense.] I propose that we undo as much of the damage as possible, and do it now! Here's how.

It's time to change our thinking. The concept behind this proposal is to adopt mnemonic toll-free codes. Each major-use category would select mnemonic codes with logical meaning, like SKY, CAR, RES, PAG, USA, AIR, etc. These unforgettable toll-free codes would create understanding, and be immensely more desirable than mix-use, non-sensible numerics like 888, 877, 866 and others. This concept has worked so well in the private sector (vanity numbers), why not adopt it as a public toll-free policy?

The key benefit is that mnemonic codes would be far more *desirable, memorable, and prestigious* than pure numerics. So much so, that users will clamor to get on to the new area code, rather than desperately hang-on to 800 numbers. Further, we will instantly increase our capacity to 30 -50 million toll-free numbers and open up millions of new vanity numbers. Crisis solved! Key FCC actions are:

and
FAX

- Decree that 800 numbers and, the new 888 exchange to be exclusively for *business* toll-free, as of some reasonable date. All other users will be getting new toll-free codes. Any 800 number used for residential, pager or cellular customers will be *required* to go shared-use. Overnight, we'll be back to 60% capacity, or so, with 100% of 888 waiting in the wings.
- Decree that all **residential** customers will be getting new toll-free codes, as of some reasonable date. Convert this user group to 500 numbers or create special mnemonic codes like HOM, PER, or RES, for example.
- Decree that all **pager** customers will be getting new toll-free codes, as of some reasonable date. Convert this user group to mnemonic codes like BEP, USA, PAG or SKY, for example.
- Decree that all **cellular** customers will be getting new toll-free codes, as of some reasonable date. Convert this user group to mnemonic codes like AIR, CEL, POR, or CAR, for example.

What timing! We have the entire spectrum of three digit area codes available for the creation of mnemonic codes. Those already assigned can even be taken back, if needed, without great hardship -- they're not yet in use. In summary, great mnemonic codes will -- overnight -- achieve the same prestige and acceptance as 800 numbers have over many years. No numeric can possibly do that. If asked, my firm would be delighted to help select appropriate mnemonics.

Comments on key questions

Warehousing-- What's done, is done. Actually, this may be a diminishing problem since the warehousing carriers are depleting their stock of numbers to satisfy demand. Forcing deposits will only serve to disadvantage small carrier and small businesses. Rather, why not allocate the release of 888 numbers, in a fashion similar to today's 800 allocation? This should give the carriers incentives to curtail frivolous assignments of 888, as they are today. The real key is free 800 numbers from the frivolous use, i.e. adopt mnemonic codes.

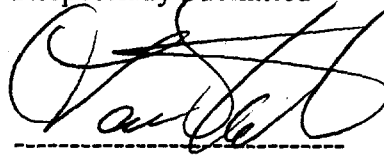
PINS-- Why would you not REQUIRE shared-use on all 800 numbers used for personal voice mail, homes, cars, cellular phones, or pagers? It is only the carriers that benefit from the language, "encourage, but not require." This action alone would free hundreds of thousands of 800 numbers which are currently in-use or "in-stock."

Vanity Numbers-- Right of first refusal is essential! Without this mechanism in place countless companies will be forced into a court battle to protect their good will from free-riders and speculators. Why not just institute a simple 30 -60 day window for companies to stake their claim, similar to international free-fone? Claimants should only be required

to have the 800 version as of the date they file. Beyond that, simply open it up on a first-come basis. Forget any regulation (industry codes), special fees and the like. It's not an FCC problem if companies fail to take advantage of this window of opportunity. Just make certain you provide a window.

WHEREFORE, it is respectfully requested that these comments be considered in this proceeding.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Loren C. Stocker", written over a horizontal dashed line.

Loren C. Stocker

Before the
Federal Communications Commission
Washington, DC

In the Matter of)	
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Toll Free Service Access Code)	CC Docket No. 95-155
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To: The Commission)	

REPLY COMMENTS OF VANITY INTERNATIONAL

Loren C. Stocker, Managing Partner of Vanity International, hereby submits reply comments in conjunction with the Notice of Proposed Rule Making released in this proceeding on October 5, 1995 and submitted November 1, 1995. With respect thereto, the following is stated:

"Public Resource" is a legal fiction

The idea that an assigned 800 number is a public resource fails any rational test. Under this legal fiction the numeric for *1-800-Flowers* would return to public domain and the corporation, *1-800-Flowers*, would lose all proprietary interest in the phone number that represents \$200 million a year-- business *they've* built by spending millions in advertisement. This is rational?

It seems more appropriate to think of the phone *system* as a public resource along with any yet-to-be assigned numbers (like public land prior to homesteading). Once in-use, however, 800 numbers should be explicitly recognized as business assets. All working numbers represent the users vested, proprietary interests in trademark, advertising, and goodwill-- not matter how seemingly insignificant. Further, with recognition of ownership rights the next entrepreneur seeking capital for a venture like *1-800-Flowers* will be more likely to be funded. Ownership rights are good for the users, and good for "the industry."

Anti-Brokerage Language

We feel that the FCC should not allow the carriers to in any way interfere with ***acquiring*** 800 numbers from existing customers-- for a fee, if necessary. Most everyone reading this is aware that *1-800-Collect* (MCI Corporation), *800-Check-In* (Hyatt), *800-The-Most* (Sprint), and *800-Shuttle* (United Airlines) were sought and secured from existing users by these well-known, honorable corporations. I can not imagine any rationale that would permit the FCC -- or the carriers -- to interfere with these legitimate transactions. The concern for "broker" activities is far overblown and should in no way preempt the rights of legitimate businesses to make acquisitions.

Transfer of Ownership

The FCC should not allow "the industry" to make any rule that interferes with the rights of businesses to freely exchange, release, or transfer ownership of 800 numbers. Period. Anything short of this would give "the industry" an unconscionable license to interfere with the business plans of their subscribers.

Substantial Usage

It has been a long standing policy of the courts to not determine adequacy of compensation. Allowing the carriers to set guidelines or determine "substantial use" would, in effect, suggest that they could interfere with small businesses in a way that no court would uphold. For example, the phone bill mentioned in *Bass Tickets (Comments on CC Docket No. 95-155, point #4)* of \$7 monthly in no way constitutes evidence of non-legitimate use, or absence of bona fide intent-to-use. It would come as no surprise if *1-800-Flowers* had a similar bills during their first months of operation and planning. In general, phone numbers don't ring until advertised. Planning takes time.

If the courts refuse to determine adequacy of compensation, how can "the industry" be allowed a free hand to determine "substantial use?" Seizing numbers from small users simply because they fail to reach some threshold of "substantial use" would be nothing short of tortious interference. Further, any requirement for monthly fees, deposits, or minimum usage charges would result in windfall profits to the carriers and would handicap small business professionals.

Due Process

It would be unconscionable to give carriers any right to seize 800 numbers without due process of law.

Vanity Numbers

I agree with the comments that vanity numbers represent only about 25%, or so, of all 800 numbers. Therefore, if we assume about half of these users will replicate then 10- 12% of the 888 exchange will be consumed, or 760,000 to 912,000 numbers.

Of our most recent 1,941 vanity creations, we confirmed that 303 were in-use as vanity numbers; or about 15.6%. It is reasonable to assume that about half as many more were in-use, but unconfirmable. With this, we have something like 23.4% of those numbers with good potential (i.e. they spell something appropriate) being used as vanity numbers. Keep in mind, though, that about 1/4 of all numerics spell nothing at all (most because of a poorly placed "0" or "1" and the rest with no vowels). Using this model, less than 20% (around 17.5%) of all 800 numbers are working as vanity numbers, or 1.3 million or so.

It is essential to recognize that vanity numbers are always created by end uses, not "the industry." Users don't subscribe to vanity numbers but, rather, numeric phone numbers. It would, therefore, be unfair for the carriers to benefit in any way from the efforts of their subscribers via special vanity number fees and such, as suggested by some.

Vanity Number Replication

Right of first refusal is essential! Even if trademark protection were sufficient -- and that's questionable -- why force as many as 1.3 million users into court to protect their goodwill from free-riders and speculators? Replication will allow countless companies to avoid court battles. Beyond the initial offering of 888 numbers, simply open it up on a first-come basis and let market forces prevail.

With regard to fees, anything over \$5 would be inappropriate and burdensome to small business.

Anti-Warehousing

Forcing deposits or charging substantial fees will only serve to disadvantage small carrier and small businesses. Rather, the notion of releasing all the planned exchanges (877, 866 etc.) makes far more sense; crisis solved. There's no need to stockpile what's in abundance. Of course, beyond 888 the balance of the exchanges have little mnemonic value and, in my view, have little value to business users.

If ownership rights prevail, market forces will drive less important users down to the least desirable exchanges. For example, a business who desires an 800 number can persuade a residence, pager, or cellular phone user to give their 800 number and go with a functionally equivalent 866 number. Free exchange of numbers is clearly essential for market forces to work.

WHEREFORE, it is respectfully requested that these comments be considered in this proceeding.

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Respectfully Submitted



Loren C. Stocker

Before the
Federal Communications Commission
Washington, DC

In the Matter of)

Toll Free Service Access Code)

To: The Commission)

CC Docket No. 95-155

COPY

EX PARTE COMMENTS OF VANITY INTERNATIONAL

Loren C. Stocker, Managing Partner of Vanity International, hereby submits ex parte comments in conjunction with the Notice of Proposed Rule Making released in this proceeding on October 5, 1995. With respect thereto, the following is stated:

On behalf of my smaller clients, myself, and the unsuspecting public I request that the FCC require the industry to **IMMEDIATELY ABANDON** the planned January 24, 1996 pre-reservation launch of the 888 exchange. In conjunction, the SMS should be reopened for "protection requests" until such time that all existing 800 owners have had due notice and a fair and equitable opportunity to apply for "protection" of the 888 version of their 800 number(s) with their existing carrier; or sufficient time to switch service to a carrier willing to do so on their behalf.

This action is vital and in the best interest of the FCC, the industry, and the public. If the planned January 24 launch is allowed to go forward a great injustice will befall much of the 800 community; they will have unknowingly forfeited their exercise of "right of first refusal." Further, the RespOrgs have collected "protection requests" in a way that clearly discriminates against small business. As of this moment, only the rich, the powerful, the well-connected, and the fortune few are pre-loading into the SMS and afforded "protection." The rest of the 800 community is about to be blinded-sided. This situation is in clear violation of the public trust, and just the kind of injustice that would make headlines and prove to be embarrassing to the FCC, should the FCC fail to take decisive action. A summary of our findings follows.

Background

First, let me make it clear that I recognize that the FCC has not yet ruled on replication. If replication is stuck down, then "protection requests," "right of first refusal," and the like are mute issues. ~~The~~ purpose of this request is avoid irreparable damage in the meantime.

My company is uniquely positioned to view the scope of this situation. We are both consultants to large, Fortune 500 companies and to small companies that subscribe to 800 service. Without exception, our large clients were personally approached by RespOrg

sales reps under heavy deadlines. They were asked to provide a list of existing numbers to be "protected" as well as requests for new 888 numbers. We know this for a fact; we helped them with their selections. On the other hand, the smaller companies subscribing to 800 services with eight of the largest RespOrgs (6 LD's and 2 RBOCS) were approached by only one of the LD's and accidentally advised by another. When we reviewed correspondence from all eight RespOrgs since last November, there has been no apparent notification to the effect that 800 holders must act to "exercise their right of first refusal."

Situation

There is widespread public confusion as to the purpose of the recent data collection by some RespOrg personnel. This effort was thought to be a "survey," a "poll," or as a way to "get a feel" of what the demand was for replication. Much of the data was not entered. Several RespOrgs elected to not take requests towards the end of the allotted period. Others, choose not to participate at all. No problem, if this was just a "survey." You can extrapolate (I suggest a factor of 3-4). But, now I understand that this incomplete, unannounced, poorly collected data was, in fact, the real thing. It is being used as the sum total of "protection requests," for right of first refusal. This is serious. This is wrong. This must be stopped.

Most companies -- predominately smaller 800 users -- were never asked for their input. Or, submitted requests but were never keyed into the SMS reservation system. Requests submitted to AT&T during the last 30 days, for example, are "collecting dust on some desk." These requests were not keyed in to the SMS and are not in "protected" status. Other RespOrgs, like Frontier, refused to even take requests stating that, "the FCC hasn't ruled yet." Others like MCI took data, but forwarded it to their customer relations group; the same group that decides if your company is big or important enough to get an MCI 800 number in the first place. It right of first refusal, if granted, is not a right of the privileged few, but of all 800 holders..

Supporting Facts/Findings

The FCC's Goal: "In light of our goal to make allocation of toll free numbers a fair and equitable process..." (CC Docket No. 95-155). Any discrimination in the collection of "protection" data would fly in the face of this clearly stated objective.

The Set-up: The December 15, 1995 letter from Michael Wade (DSMI) to Kathy Levitz (FCC) stated, "The initial round of *protection requests* was due .. December 14, 1995" (emphasis added). It also stated, "The next round of data input is scheduled for January 5 -- 12, 1996." Our understanding is that these numbers -- and only these numbers -- are coded as "not available" for the general 888 release and early reservation process to begin January 24, 1996. On January 16, 1996 I confirmed that is, indeed, the situation awaiting an FCC order to proceed. Concurrently, FCC has either been closed or snowbound and no action has been taken on replication. It is essential to recognize that a rescheduled launch date alone will not change this.

The Deadline: The unsuspecting public expects that, given an affirmative FCC outcome, their right to replicate will be preserved. I could find no mention in the press that "protection requests" were fait accompli as of January 12, 1996. This deadline for "protection requests" was a backroom deal and published as an attachment to the "Comments of the SNAC/OBF." This key deadline was unannounced to the public nor generally understood by those directly affected, i.e. the 800 community at large.

The Launch: I could find no mention in recent articles of the January 24 pre-reservation launch date. The public is wholly unaware that the 888 version of their 800 number may be assigned to someone else just days from now. This pre-reservation mechanism would nullify their option to replicate, as the deadline for "protection requests" has passed. The January 24, 1996 launch date was also unannounced and is not generally known.

Who's First in Line?: The 888 request forms also contained requests for new, unreplicated 888 numbers. These requests may be filled by computer targeting during the first minutes of the January 24, 1996 launch (via the MGI) giving a competitive advantage to those who's requests for new numbers are keyed in. This is especially troubling where you consider that one RespOrg may be targeting an 888 number for which AT&T (or other RespOrg) has an un-keyed request form. Subsequently, there will be no way to compel the successful RespOrg or holder to turn it over. A class action may ensue.

Due Notice: The commission has characterized telephone numbers as a public resource that is not the property of the carriers (NANP Order, CC Docket No. 92-237, FCC 95-283). Yet, the RespOrgs were not required to participate (some did not) or even inform their subscribers of the consequences of their inaction. Is it not in the public interest to give 800 number "holders" due notice?

Right to Exercise: The question before the commission is "whether the current holders of 800 numbers should be permitted to exercise such a right of first refusal (888 replication, CC Docket No. 95-155)." There is no suggestion that the carriers have a right to decide this matter for them. Yet, by selectively collecting and submitting data RespOrgs may have sealed the faith of many of their subscribers. Is it not the right of the "holders" to make this determination?

Personal Effort: After learning of the deadline, I made a personal effort to submit replication requests with 6 (5 LD's and 1 RBOC) of the 8 RespOrgs prior to the January 12 cut-off. Only one had made unilateral contact with us, and that was just days before the deadline. From that effort, I discovered the following: Requests submitted to AT&T -- and any since December -- are being logged in order of receipt, but not keyed into the SMS. Another LD RespOrg, Frontier, had no mechanism in place to take requests and stated that, "the FCC hasn't ruled yet." MCI, Sprint, CWC took requests, but it's not clear if they were going to be keyed in before the deadline.

The RBOC had no mechanism and was of the understanding that the data gathering was just "for research."

Case of 1-800-Tickets: Two weeks ago, unaware of the January 12, 1996 deadline, Mr. Richard Zorn, President of 800-Tickets, Inc., called AT&T to inquire about the current status of 888 replication. He was told explicitly, "We are not taking any requests. If we did, they would just be collecting dust on someone's desk." On our advice, Mr. Zorn called AT&T once again during the week of January 8 and was further advised, "AT&T headquarters instructed us not to take any more forms, until further notice." Pressed further, however, the rep agreed to receive the form and subsequently forwarded it on to the 800 specialist in his Syracuse office.

On January 12, 1996 I personally confirmed that AT&T, indeed, had this policy in place. I further discovered that the receipt of these forms was "cut-off for a while, but now the forms were being logged in a pile by order of receipt;" a seemingly dead end. I specifically asked our AT&T contact if these requests were then being entered into the SMS database. He responded, "Not as far as I know." Further pressure by Mr. Zorn, incidentally, resulted in his 888 number being added to AT&T "protected" list as of today, January 18, 1996.

Discrimination by default

There should be no discrimination between large and small users. Period. All should be afforded due notice and equal access to "protection," if granted. Yet, the facts suggest that RespOrgs made only limited effort to secure "protection requests" in light of the pending FCC rule on Docket No. 95-155; a classic application of the 80/20 rule driven by simple economics. As a result, their large subscribers were easily targeted and "got the word," while others were either not solicited or not key-in upon submission (a la AT&T forms collection) when effort was suspended.

RespOrgs had incentives to get large users to sign their request forms, as these forms contained language that voided the replication requests should the user change RespOrgs. This language was necessary, of course, but had the clear benefit of locking in large customers for the duration of the ruling and launch. Economics supported this effort; it wasn't done just for the public good. This campaign began late last fall and was mostly completed by the December 14th deadline.

When it came to mid-size and smaller users, RespOrgs had less incentive to solicit requests and suspended most second-tier effort in December, pending FCC action. By default, smaller subscribers who failed to seek out "protection" during in the first wave -- the vast majority -- were neither notified to take action, nor directly surveyed by any sales reps due to their lack of account revenue. These 800 holders are about to be blind-sided.

Conclusion

The situation as it stands is unconscionable. If granted, it is the "holders" right to replicate their 888 numbers -- not the RespOrgs. Yet, the RespOrgs have preempted the rights of

small users by not taking action, or by failing to advise them of the consequences of their inaction. When it comes to replication, it should make no difference whether a request is the first or last collected; "protection" means priority over any and all reservation requests.

The public is mistakenly under the notion that if the FCC allows replication, then they will have time ample to submit a request *prior* to the reservations launch. They are wholly unaware that a backroom deal may have rendered this assumption invalid. All afforded "protection" is fait accompli, and most of it as of December 14, 1995.

Further, the rich, the powerful, the well-connected, and the fortune few who's requests were pre-loading into the SMS may also be first to get their pre-reservations filled by computer targeting during the first minutes of the January 24, 1996 launch, or on a rescheduled launch date (a la the MCI/555 technique). They would, thereby, become the assignees of 888 vanity numbers for which replication requests may either be "collecting dust" or were never solicited in the first place. A class action may ensue.

It is, therefore, not sufficient to simply delay the launch; SMS must be reopened for "protection request" to give everyone a fair and equitable opportunity to participate. The public should be well advise of the timeline in advance.

Remedies and Recommendations

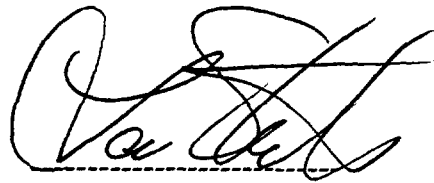
- Suspend the January 24 launch at once. The FCC's extended furlough and winter weather is justification enough.
- Make a ruling on Docket No 95-155 first. The RespOrgs ^{Should} not have to expend further effort if this is all for naught.
- Immediately reopen "protection requests" to for all users to participate.
- Prohibit any discrimination on the basis of "account revenue."
- Require RespOrgs to inform all subscribers of deadline and the new launch date.
- Require RespOrgs to inform all subscribers of their replication policy. If the RespOrgs are not going to key-in their request, then their subscribers should be so informed. Rather than compel RespOrgs to participate, this requirement allows market forces to drive the decision to participate or not.
- Set deadlines to allow ample time for users to change to a *participating* carrier, if their present RespOrg is doing nothing.
- Allow enough time between the "protection" deadline and the new launch date for concerned users to confirm their listing on the SMS. This will ensure accuracy and minimize fraud and abuse.

In summary, we contend that it is not the privilege of the RespOrgs to decide whether or not to seek "protection," but, rather, the right of subscriber. Therefore, subscribers must be given due notice and adequate time to ensure their "protection requests" will be implemented by their existing RespOrgs; or adequate time to seek out a new carrier if the existing one is unwilling to do so. To rectify this situation, we ask that the FCC stop the deployment of 888 numbers at once and reopen submission of "protection requests."

WHEREFORE, it is respectfully requested that these comments be considered in this proceeding.

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Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Loren C. Stocker', written over a horizontal dashed line.

Loren C. Stocker

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
RULES PROMOTING)	
EFFICIENT USE,)	REPORT NO. CC 97-17
FAIR DISTRIBUTION)	CC DOCKET NO. 95-155
OF TOLL-FREE NUMBERS)	

PETITION FOR STAY AND RECONSIDERATION

Loren C. Stocker, Managing Partner of Vanity International, hereby seeks an immediate stay and reconsideration of the referenced sections of the Report and Order dated April 4, 1997 on behalf our firm, our clients, and the general public.

Specifically, we request that the Commission vacate that portion of its decision that authorizes Carriers and/or Responsible Organizations (RespOrgs) to disconnect the toll-free numbers services of suspected "hoarders" without the benefit of notice, hearing or due process. Second, we request that the Commission vacate that portion of its rulemaking that creates a "rebuttable presumption" that any toll-free subscriber with "more than one toll-free number" is presumed to be illegally "hoarding" toll-free numbers. Third, we request that the Commission vacate that portion of its rulemaking that discriminates against toll-free subscribers in the exercise of their rights under the Telecommunications Act of 1996 as "telecommunications end-users", and who are prescribed by Congress to have the right to "retain their telecommunications numbers" with full and unfettered "number portability."

Our company is uniquely positioned to view the scope of this situation as we consult to both large, Fortune 500, companies and small companies that subscribe to 800 service. Recently, we launched 800-*SoftLine*sm and *SoftLine*sm Studios which are dedicated to the deployment and development of multi-channel commerce. The *SoftLine*sm enterprise is basically an incubator for baby businesses aspiring to become the next 800-Flowers, each employing branded toll-free numbers, Internet domain addresses, and interactive services. I wish to focus my comments principally on the "Hoarding and Brokering" ruling which I find most anti-competitive and contrary to the public interest, if not outright unlawful and unconstitutional.

DEFECTIVE INDICATOR/PROCEDURE

It seems abundantly clear that the Common Carrier Bureau has overstepped its role as public servant and lost sight of its stated goal "to make allocation of toll-free numbers a fair and equitable process." Perhaps someone mixed up the acronym; it's FCC, not FBI.

My understanding is that the FCC is chartered to inquire into the affairs of regulated telecommunications suppliers, but not the private affairs of citizens and businesses – especially without probable cause. This "rebuttable presumption" based on "multiple toll-free numbers" suggests unconscionable power to suspend a toll-free subscription and associated intellectual property without due process. In effect, anyone with two or more numbers is considered guilty until proven otherwise.

The simple use of multiple toll-free numbers is a *defective indicator* of hoarding or brokering. In fact, the use of multiple toll-free numbers is an everyday business practice. Virtually every savvy advertiser in America tracks their media performance using unique toll-free numbers for each medium. Frequent advertisers use hundreds if not thousands of toll-free numbers for this purpose – all terminating to a "single toll-free subscriber." The use of multiple toll-free numbers is the status quo in American media.

Essentially, the FCC has no business dictating the number of toll-free numbers a business can use any more than the United States Post Service (USPS) should involve themselves in prescribing how many addresses a business can use. If the Commission "finds that the incentive already exists" for service providers to minimize the use of toll-free numbers (i.e. the \$0.70 monthly fee), then let economics dictate this business decision as well.

ABUSE OF POWER

I fear the Commission has lost sight how such power in the hands of Carriers and/or RespOrgs will be abused by selective enforcement. Recent experience has shown that Carriers and/or RespOrgs will unfairly apply such rules as they did when they selectively invited participation in the 888 set-aside (See *ExParte Comments of Vanity International*, January 19, 1996, and *Emergency Motion for Stay*, February 29, 1996). The Commission can be certain that no Carrier and/or RespOrg will ever question the use of thousands of toll-free numbers by their large, Fortune 500 customers. This hostile and anticompetitive ruling will only be harmful to the very start-up businesses Congress is hoping to spawn.

The fact is that Carriers and/or RespOrgs would like the power to seize toll-free numbers from smaller clients and give them to their most favorite customers. Combined with "snap back" privileges, Carriers and/or RespOrgs would be back in the business of power brokering as they were before portability. The FCC should both stay subject ruling 52.107 and uphold 52.103d that requires Carriers and/or RespOrgs to drop disconnected numbers into the general pool for "first-come, first-service" assignment. Anything less would make the FCC party to this transparent campaign to engage in the redistribution of wealth.

The prevailing big business attitude is clearly reflected in the comments of TicketMaster (a.k.a. *Bass Tickets, Inc.*) who sought to acquire a toll-free number from another subscriber, but was unwilling to buy out their interests. You will note that it was TicketMaster who "inquired about the availability of the number," not the other way around (see "*Comments of Bass Tickets, Inc.*"). Subsequently, TicketMaster appealed to the Commission to make toll-free numbers prohibitively expensive to all but a select few.

Those businesses and individuals who had the foresight to secure excellent toll-free numbers, either vanity or numeric, have every right to use and develop those numbers as those who had the foresight to homestead on oceanfront property. Ethically, how can a Commission that is unwilling to interfere with even the 800 numbers used by school children and others with pagers (i.e. without PIN codes), seize numbers from legitimate entrepreneurs who have demonstrated no intent to hoard or broker? It's too bad numbers are in short supply, but the contract with public was on a "first-come, first-serve" and assignments cannot now be revoked. Furthermore, the Commission is acutely aware that it was the Carriers and/or RespOrgs who "ran the bank" during the final weeks of unrestricted 800 number access, not subscribers.

ABUSE OF PRIVILEGE

I do agree, support, and welcome the FCC's authority to step in where subscribers are abusing the privilege of their toll-free subscription; specifically, subscribing to toll-free numbers with no intent but to sell. This behavior is an obvious obstruction to the "fair and equitable allocation of toll-free numbers.

A toll-free subscription, in my view, is analogous to homesteading where there was one cardinal rule: to gain ownership you had to *live* (i.e., use) on the property. Speculators could not lay a claim to land and immediately sell it off as real estate, having never set foot on the soil. The homesteading rule protected the public interest and ensured that land was freely available to those who had a bona fide intent to use the property. Similarly, toll-free numbers have been, and should remain, available on a "first-come, first-serve," non-discriminatory basis. The rule for toll-free numbers should be just as rational; you want it, you got it – just use it as your own.

Abuse should be investigated only where there is *probable cause* that a number is being held only for the purposes of sale as evidenced by a *verbal or written solicitation of sale of a toll-free number alone without any bona fide program, service, or enterprise*. The plain meaning of this proposed language is that the *subscriber* must clearly demonstrate the intent to sell a toll-free number and that any compensation suggested must be *solely* for the release of the toll-free number; not to reprint business materials, alert a client base, acquire intellectual properties in any form (i.e. business plans, trademarks, or client list), or acquire real assets.

If an inquiry is indicated by clear, compelling, and objective evidence, the 800 subscription should only be placed on-hold pending outcome if the number is inactivate to

begin with. Under no circumstance should live 800 service be suspended or a number assignment revoked without due process.

Great caution should be exercised so that alleged offenders are not only given due process, but not victimized by the regulation. In the attempted acquisition by TicketMaster (*Comments of Bass Tickets, Inc.*), for example, no action is indicated as the *buyer* initiated contact and solicited the release. Therefore, any evidence brought before the Commission should be dismissed, as the toll-free subscriber demonstrated no intent to sell prior to Ticketmaster's (a.k.a. *Bass Tickets*) contact. Buyers should not have standing to complain about transactions that they initiate. This stipulation prevents disgruntled buyers from appealing to the FCC each time a negotiation fails.

THE CONTINUING FICTION OF A PUBLIC RESOURCE

Further, whenever a number is part of a program, service, or enterprise then the subscription can no longer be assumed a public good or resource. It is *pure fantasy* that a \$250 million company like 800-Flowers is built upon a "public resource" without foundation and subject to the prevailing whims of the Commission. The full scope of ownership is clearly outside the authority of the Commission alone, as the issues involved are not purely telecommunication.

The truth is that when Jim McCann (*Founder and President of 800-Flowers*) pays his phone bill, he pays for the subscription of the numeric 800-356-9377 -- not what it spells (i.e., *800-Flowers*). Further, he has a reasonable expectation that the subscription will continue indefinitely. Even if Mr. McCann fails to make payment, he has up to four months to recover the subscription. The simple fact is that the intellectual property "800-Flowers" was *created* and overlaid upon a lifetime subscription; it was neither issued by the Carrier and/or RespOrg or part of the toll-free subscription. The same fundamentals apply to branded programs like 800-Collect and, in their most basic form, to a client list developed from the simple use of toll-free numbers in commerce.

It should be clear to all that intellectual property is not a public resource, but neither is the control of a lifetime subscription. The Telecommunications Act of 1996 ensures that 800-Flowers has the right to "retain their telecommunications numbers" with full and unfettered "number portability." What then supports the legal fiction that assigned numbers are a "public resource?"

In my view only *unassigned* toll-free numbers are a public resource -- just as Government land was unquestionably a public resource prior to homesteading. In stark contrast, companies, programs, and services like 800-Flowers, 800-Collect, and others can be sold and the subscription reassigned without any lawful interference by the Commission, Carriers and/or RespOrgs. The Commission has only a fictional standing in the matter and could be enjoined by the courts to prevent interference.

Rather, it is the *system* of telecommunications that remains and must always be nurtured and protected as public resource, not assigned addresses. For those readers still in denial, consider the folly of the USPS attempting foreclosure proceedings under the theory that a specific mailing address is a "public resource" and must be reclaimed. If the Commission is to ensure that the "allocation of toll-free numbers [remain] a fair and equitable process," then it must ensure that all companies and programs are afforded equal protection – even those in their infancy!

ADEQUACY OF USE

Once a toll-free number is assigned, the Commission should not involve itself in the adequacy of use, i.e. "the amount of calling of a particular number." This discriminatory assessment would be analogous to the USPS engaging in "red lining" or offering mail delivery only where the volume deems it to be profitable. The courts, too, decline to rule on the adequacy of compensation where a contract is otherwise valid. Further, the Commission ruled that a \$0.70 monthly fee is incentive enough to use numbers wisely (i.e., "*incentives already exist for using PIN*"); how then can the Commission establish a double standard requiring targeted subscribers to justify the volume of use – or share proprietary business plans -- with an agency that has no authority to ask?

THE 888 AUCTION FOLLY AND BEYOND

Finally, it should be abundantly clear that the proposed auction of confusingly similar 888 vanity numbers will be immediately enjoined and ultimately disallowed by the courts. The Commission has one thing absolutely correct: toll-free numbers have *no inherent value*. Rather, it is the intellectual property overlaid by the 800 holders that is reportedly worth \$700 million. An auction of these proprietary rights would be unconscionable (see 888-*Get-Real* attached). The Commission would be wise to educate Congress and save everyone from this expensive, protracted litigation. Subsequently, the entire pool of 888 numbers should be released on the "first refusal" basis promised – without charge.

It should come as no surprise that public confusion between 800 and 888 will endure for generations, as 800 numbers have become *synonymous* with toll-free. Far more troubling is the confusion that will ensue when 877 and other toll-free numbers begin to look like local area codes. Just imagine the backlash from residential customers who field misdirected calls at all hours of the night in the 847, 807, and, perhaps, 887 area codes!

The better solution would be to abandon the doomed policy adopted by the "industry" and to accelerate the release of *portable* 500 numbers and, perhaps 700 numbers. The Commission should then seek comment on the creation of vanity SAC's (see *Comments and Reply Comments of Vanity International*) or a purely numeric solution like *express prompting*; an *optional* set of single-digit prompts entered *before* (express) or *after* (voice prompt) call completion. The express prompting solution would make each toll-free number -- and each local number for that matter -- ten times more useful *without* damaging existing intellectual overlays.


The primary advantage of *express prompting* over a mandated eight-digit format is that the ten new addresses could be used or reassigned *only* by the existing subscriber. Many companies would then elect to release multiple numbers once their primary numbers serve a variety of locations and/or applications. Alternately, subscribers like 800-Flowers can *opt out* of the feature and stay with the seven-digit call format that spells their name. From the consumer perspective, the transition is painless; dialing the traditional seven digits will – at worst – be intercepted by a voice prompt to guide them through any additional choices. From a business perspective, each number is ten times more powerful. Problem solved.

Recognizing that any change in the system will be time consuming and expensive, the Commission would be wise to seek a permanent solution that is both more desirable and less confusing than the existing quagmire.

CONCLUSION AND RECOMMENDATION

The Commission would best serve the public interest by maintaining a regulatory environment where the next 800-Flowers will be nurtured and protected from big business interests. In my view, the Commission's role is to adopt policies that encourage toll-free business development as it has done in radio licensing and HDTV. The present language in the Report and Order will only serve to deter investment and stifle business development and should, therefore, be immediately stayed until a more rational and equitable approach is employed.

Respectfully Submitted,



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Please give this petition full force and effect of those received during the 30-day period. We were advised that the Memorial holiday extended the due date until today.